

In re Holiday, 1993 WL 733165 (Bankr. S.D.Ga., Mar 30, 1993) (NO.
91-10426, 92-11151, 92-11315, 92-11830, 92-11768, 92-11636)

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:) Chapter 13 Case
) Number 91-10426

AARON HOLIDAY, III)

Debtor)
_____)

NATIONSBANK, INC.)

Movant)

FILED
at 9 O'clock & 52 min A.M.
Date: 3-30-93

vs.)

AARON HOLIDAY, III)

Respondent)
_____)

IN RE:)

THADDEUS EARL HOOD)

BRENDA LOUISE HOOD)

Debtors)
_____)

Chapter 13 Case
Number 92-11151

CHRYSLER CREDIT CORPORATION)

Movant)

vs.)

THADDEUS EARL HOOD)

BRENDA LOUISE HOOD)
)
 Respondents)
 _____)

IN RE:)
)
 BILLY JOE RUCKER)
 KAREN BOYNTON RUCKER)
)
 Debtors)
 _____)

Chapter 13 Case
Number 91-11152

GENERAL MOTORS ACCEPTANCE)
 CORPORATION)
)
 Movant)
)
 vs.)
)
 BILLY JOE RUCKER)
 KAREN BOYNTON RUCKER)
)
 Respondents)
 _____)

IN RE:)
)
 ELLA VIRGINIA MIMS)
)
 Debtor)
 _____)

Chapter 13 Case
Number 92-11315

GENERAL MOTORS ACCEPTANCE)
 CORPORATION)
)
 Movant)
)
 vs.)
)
 ELLA VIRGINIA MIMS)
)

Respondent)
 _____)
 IN RE:)
)
 CHRISTOPHER EVAN RYAN, SR.)
 TAMERA LYNN RYAN)
)
 Debtors)
 _____)
 CENTURY FINANCE COMPANY)
)
 Movant)
)
 vs.)
)
 CHRISTOPHER EVAN RYAN, SR.)
 TAMERA LYNN RYAN)
)
 Respondents)
 _____)
 IN RE:)
)
 GLENN THOMAS TURNER)
)
 Debtor)
 _____)
 CENTURY FINANCE COMPANY)
)
 Movant)
)
 vs.)
)
 GLENN THOMAS TURNER)
)
 Respondent)
 _____)
 IN RE:)
)
 NATHANIEL JAMES WILLIAMS)

Chapter 13 Case
 Number 92-11830

Chapter 13 Case
 Number 92-11768

Chapter 13 Case
 Number 92-11636

PATRICIA A. WILLIAMS)
)
Debtors)
_____)
)
CENTURY FINANCE COMPANY)
)
Movant)
)
vs.)
)
NATHANIEL JAMES WILLIAMS)
PATRICIA A. WILLIAMS)
)
Respondents)

ORDER¹

General Motors Acceptance Corporation, Nationsbank, Inc., Chrysler Credit Corporation, and Century Finance Company (collectively "the creditors") object² to the following provision contained in paragraph 2(b) of the Chapter 13 plan proposed in each of the above cases:

To the extent that any claim is a partially secured claim and a partially unsecured claim pursuant to 11 U.S.C. §506(a), that portion of the claim which is unsecured shall be provided for as an unsecured claim under this plan.

¹As the issue presented in each of the above referenced cases is identical, the matters are consolidated for the purpose of this order only.

²By counsel's letter dated January 11, 1993 and follow-up letter dated January 15, 1993, Ella Virginia Mims, debtor in Chapter 13 case No. 92-11315, and Billy Joe Rucker and Karen Boynton Rucker, debtors in Chapter 13 case No. 91-11152, seek reconsideration of my rulings sustaining objection to paragraph 2(b) of their plans. These letters are treated as a motion for reconsideration in each case.

Creditors holding such claims shall retain their liens only to the extent of their allowed secured claim. To the extent that the allowed secured claim is paid during this case or thereafter, such creditors' liens shall be reduced. Once the allowed secured claim has been paid in full, either during or after the pendency of this case, the creditor holding such claim shall promptly mark any lien securing such claim as satisfied in the appropriate public records and shall surrender to the debtor(s) all necessary lien cancellations, including certificates of title to motor vehicles with the lien released, if appropriate. This provision shall not apply to claims which are non-dischargeable under 11 U.S.C. §1328(a).

(Emphasis added).

Each creditor holds a claim secured by personal property. Each creditor's claim is undersecured by virtue of the proposed valuation of its collateral in accordance with 11 U.S.C. §506(a), which is not disputed, which means under paragraph 2(b) the creditor must await completion of the Chapter 13 plan to receive all payments due under the plan on the unsecured portion of its claim, although the creditor must release its lien interest on the debtor's property upon payment of the secured claim. The creditors argue that paragraph 2(b) is in conflict with 11 U.S.C. §349(b).

Section 349(b) provides in pertinent part,

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title [11]--

. . .

(1) reinstates--

. . .
(C) any lien voided under section 506(d)
of this title; [and]

(3) reverts the property of the estate in
the entity in which such property was vested
immediately before the commencement of the case
under this title.

Section 349(b) is designed "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." H.R. No. 95-595, 95th Cong. 1st. Sess. (1977) pp. 337,338; S. Rep. No. 989, 95th Cong., 2d Sess. 48-49 (1978). The purpose of §349(b) is potentially thwarted if the debtor can obtain release of a lien, transfer the property formerly subject to the lien, and dismiss the Chapter 13 case. See generally In re: Jones, ___ B.R. ___, 1993 WL 49925 at 22 (Bankr. E.D. Mich. 1993). According to the creditors this plan provision violates §1325(a)(1), which provides in pertinent part

(a) . . . the court shall confirm a plan if--
(1) the plan complies with the provisions of
this chapter [13] and with the other applicable
provisions of this title [11].

Chapter 3 applies in Chapter 13 cases. 11 U.S.C. §103(a).

The debtors' reliance on In re: Murry-Hudson, 147 B.R. 960, (Bankr. N.D. Cal. 1992) in support of paragraph 2(b) is unavailing. The Murry-Hudson court held that under §1322(b)(2)³ "a

³Under §1322(b)(2), a Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a

Chapter 13 debtor is permitted not merely to alter the amount and terms of payment of her secured debts, but to hold the property free and clear of liens after paying the allowed secured claims in accordance with the provisions of her confirmed plan." Id. at 962 (emphasis added). I agree that §1322(b)(2) (along with §506(a)) permits modification of a secured creditor's lien rights. In re: Avret, 146 B.R. 47 (Bankr. S.D. Ga. 1992). "[O]nce the liability on the allowed secured claim has been paid the liability of the debtor is satisfied to the extent of payment, and, the lien, to the extent that it secures the payment of the allowed secured claim, is satisfied." Id. at 50. Although under the plan the lien is "satisfied" upon payment of the secured claim in that the debtor is no longer liable for payment under the plan on the secured claim, formal release of the lien prior to conclusion of the plan and discharge of the debtor would invite a debtor to utilize Chapter 13 to secure release of a lien, transfer the subject property "unencumbered" to an unsuspecting third party and dismiss his or her case. I disagree with the Murry-Hudson court that this concern is "more illusory than real." Murry-Hudson, supra, at 962. The court in Murry-Hudson concludes that other provisions of Chapter 13 adequately protect secured creditors from such misuse of Chapter 13,

security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims[.]"

and that even if following release of the lien the debtor does dismiss or convert, the creditor is "probably" left in no worse position than it would be outside of bankruptcy since the value of the secured portion of its undersecured claim would have already been paid. Id. at 963. In my view, the rationale of the Murry-Hudson analysis, though sound as to the effect on the lienholder, does not address the effect on the debtor. The issue is whether the debtor may realize the benefits of a completed Chapter 13 plan before actually completing the plan.

The goal of Chapter 13 is financial rehabilitation and a fresh start for the debtor. See In re: Bell, 700 F.2d 1053, 1057 (6th Cir. 1983); In re: Pendlebury, 94 B.R. 120, 125 (Bankr. E.D. Tenn. 1988). Chapter 13 attempts to balance the interests of debtors and creditors by allowing debtors with regular income to adjust their debts through extension and/or composition plans funded out of future income while retaining existing assets with creditors receiving payment from such future income which is not available under a Chapter 7 liquidation. Congress in establishing Chapter 13 encourages a financially overburdened individual to voluntarily seek Chapter 13 relief by providing incentives not available under Chapter 7: 1) a codebtor stay, 2) only the debtor may file a plan, 3) retention of property by the debtor during the pendency of the plan, 4) with specific limitations, modification of creditor's

rights under a plan, 5) continued court protection during the pendency of the plan and 6) an expanded discharge under §1328(a).

Section 349 limits the final effect of plan provisions and the advantages available under Chapter 13 to completed cases. Only in completed cases have the debtors attained the financial rehabilitation and fresh start contemplated under the Code. See In re: Wood, 23 B.R. 552, 558 (Bankr. E.D. Tenn. 1982). For voluntarily proceeding under Chapter 13 the debtor has available the advantages of this Chapter. The completion of the debtor's case allows the debtor to retain the advantages under this Chapter, be financially rehabilitated and attain a fresh start.

Chapter 13 does not contemplate a piecemeal approach to plan completion. Under the cases now before me the debtors seek to secure the advantages afforded by modification of the rights of the holders of an allowed secured claim by providing that upon the payment of the amount of the allowed secured claim the lien securing the claim must be satisfied of record before plan completion. This is not only contrary to the provisions of §349 but also the underlying spirit and purpose of Chapter 13. The advantages available under Chapter 13 are reserved to the financially rehabilitated debtor to facilitate the debtor's fresh start following successful plan completion and discharge or hardship discharge. The 2(b) provision of the plan in each case violates the

confirmation criteria of §1325(a)(1) in that the provision is contrary to the purpose of §349.

It is therefore ORDERED that the objection to confirmation filed by each of the above creditors in the respective Chapter 13 cases is sustained;

further ORDERED that the debtors modify their plans to meet the terms of this order within thirty (30) days;

further ORDERED that the motions for reconsideration filed by the debtor(s) in Chapter 13 case No. 92-11315 and Chapter 13 case No. 91-11152 are denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 29th day of March, 1993.